

立法會
Legislative Council

LC Paper No. CB(4)707/14-15
(These minutes have been seen
by the Judiciary Administration)

Ref : CB4/SS/8/14

**Subcommittee to Study the Proposed Subsidiary Legislation on the
Procedures to be Adopted by the Competition Tribunal**

**Minutes of the first meeting
held on Tuesday, 17 March 2015, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon Dennis KWOK (Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon LEUNG Kwok-hung
Hon SIN Chung-kai, SBS, JP
Hon TANG Ka-piu, JP
- Members absent** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
- Public Officers attending** : Item II
Judiciary Administration
Ms Wendy CHEUNG
Assistant Judiciary Administrator (Development)
Miss Yan LEUNG
Senior Administrative Officer (Development)

Department of Justice

Mr Francis KWAN
Senior Assistant Law Officer (Civil Law)

Mr David GROVER
Assistant Law Officer (Civil) (Acting)

Mr Allen LAI
Senior Government Counsel

Ms Phyllis POON
Senior Government Counsel

Mr Henry CHAN
Senior Government Counsel (Acting)

Miss Yvonne CHEUNG
Senior Government Counsel (Acting)

Miss Cindy CHEUK
Government Counsel

Clerk in attendance : Miss Mary SO
Chief Council Secretary (4)2

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Cindy CHAN
Senior Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant 4(2)

I. Election of Chairman

Mr Abraham SHEK, the member who had the highest precedence amongst members present at the meeting, presided over the election of the Chairman.

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2. Mr Abraham SHEK invited nominations for the chairmanship of the Subcommittee. Mr Dennis KWOK was nominated by Mr LEUNG Kwok-hung and the nomination was seconded by Mr Abraham SHEK. Mr Dennis KWOK accepted the nomination. As there was no other nomination, Mr Abraham SHEK declared that Mr Dennis KWOK was elected Chairman of the Subcommittee.

II. Meeting with the Judiciary Administration and the Administration

LC Paper No. CB(4)632/14-15(01) -- Judiciary Administration ("JA")'s paper entitled "Brief on the Proposed Competition Tribunal Rules and other Related Rules"

LC Paper No. CB(4)632/14-15(02) -- JA's paper entitled "Comparison of the Key Differences in the Procedures of the Competition Tribunal and the Court of First Instance"

LC Paper No. CB(4)632/14-15(03) -- JA's paper entitled "Broad Comparison of the Key Procedures of the Competition Tribunal, the Lands Tribunal and the Small Claims Tribunal"

LC Paper No. CB(4)632/14-15(04) -- JA's paper entitled "Rules and Procedures Applicable to the Competition-related Courts in Selected Common Law Jurisdictions"

LC Paper No. CB(4)632/14-15(05) -- Letter dated 5 March 2015 from the Commerce and Economic Development Bureau providing the following requested information:

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- (a) relationship between the contravention of the First Conduct Rule under section 6 of the Competition Ordinance ("CO") (Cap. 619) and the Second Conduct Rule under section 21 of the CO; and
- (b) procedures for members of the public to seek remedies due to contravention in the requirements of the CO.

Annex B to LC Paper No.CB(4)493/14-15(03) for the meeting of the Panel on Administration of Justice and Legal Services on 16 February 2015	--	Marked-up of the proposed amendments to the Rules of the High Court (Cap. 4 sub. leg. A)
LC Paper No. CB(4)632/14-15(06)	--	Background brief prepared by the Legislative Council Secretariat

3. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Declaration of interest

4. Mr Andrew LEUNG declared that he was a member of the Competition Commission ("the Commission").

Discussion

5. At the invitation of the Chairman, Assistant Judiciary Administrator (Development) ("AJA(Dev)") briefed members on LC Paper Nos. CB(4)632/14-15(01)-(04).

6. AJA(Dev) advised that JA had consulted various stakeholders, including the Hong Kong Bar Association, the Law Society of Hong Kong and the Commission, etc. on the following Draft Rules to be adopted by the Competition Tribunal ("the Tribunal"):

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- (a) the Competition Tribunal Rules ("CTR") which set out the procedural rules for the Tribunal to cater for different types of proceedings that the Tribunal might need to deal with;
- (b) proposed amendments to the Rules of the High Court (Cap. 4 sub. leg. A) which provided for (i) the procedures for proceedings transferred between the Tribunal and the Court of First Instance ("CFI"); and (ii) the procedures for applications to the Court of Appeal for leave to appeal from the decisions of the Tribunal;
- (c) the Competition Tribunal Fees Rules which set out the fees to be paid by users of the Tribunal for various purposes; and
- (d) the Competition Tribunal Suitors' Funds Rules which governed the administration of suitors' funds for the Tribunal in a way similar to that of the High Court, including how suitors' funds were lodged in and paid out of the Tribunal, investment of the funds, provision of interest for individual suitors' accounts and preparation of annual audited financial statements for the funds.

JA JA had taken into account the comments of the stakeholders in refining the Draft Rules. All stakeholders were generally supportive of the proposed amendments. At the request of members, AJA(Dev) agreed to provide a copy of the comments given by the two legal professional bodies and the Judiciary's responses to these comments.

7. As a follow-on action could only be brought by a person for the loss or damage he/she had suffered as a result of any act that had been determined to be a contravention of a conduct rule under section 110 of the CO, Assistant Legal Adviser 2 ("ALA2") enquired about the rationale for requiring the person to also file a statement of claim (rule 93(1)(b) of CTR) as in the case of requiring plaintiffs to do the same for making other civil claims in the CFI. ALA2 asked if rule 93(1)(b) of CTR might be at variance with the spirit and policy intent of section 144(3) of the CO which provided that the Tribunal was to conduct its proceedings with as much informality as was consistent with attaining justice.

JA 8. AJA(Dev) explained that the reason for requiring the claimant to also file a statement of claim under CTR was that private follow-on actions under the CO were akin in nature to actions in the CFI. The originating notice of claim and the statement of claim specified different information required. At the request of members to better facilitate court users, AJA(Dev) undertook to examine whether the procedures and/or information required for bringing

Action

follow-on actions could be simplified.

9. In view of the fact that the legal costs for seeking claims in the CFI were generally more expensive than that in the Small Claims Tribunal ("SCT"), Mr TANG Ka-piu asked whether consideration would be given to allowing private follow-on actions under the CO to be filed in the SCT if the amount of claims was small, say, \$50,000 or less. Mr LEUNG Kwok-hung expressed support for Mr TANG's suggestion.

10. AJA(Dev) responded that the Tribunal was established within the Judiciary as a specialized court to hear and adjudicate competition-related cases. Section 110 of the CO provided that follow-on actions were to be handled by the Tribunal in general. The Judiciary had put forward various proposals in CTR to help ease the legal costs of litigants. For examples, rule 30 of CTR provided, amongst others, that (a) parties might choose to act in person; (b) with leave granted by the Tribunal, a company might be represented by its director; (c) the Tribunal be given a reserve power to allow any other person to appear on a party's behalf. One of the objectives of rule 30 was to help reduce the legal costs of the parties under suitable circumstances, particularly those who brought follow-on actions under Part 5 of CTR. Moreover, forms, instead of pleadings etc., were proposed to be used in CTR in general. A direction hearing would be held for follow-on actions so that judges would be able to decide on the most suitable procedures for a particular case (rule 97 of CTR). Judges were also proposed under CTR to be given powers to dispense with the application of the Rules of the High Court to expedite the handling of cases as necessary and appropriate (rule 4 of CTR). Further, similar to the CFI, it was also proposed in CTR that the Tribunal would be empowered to allow consolidation of proceedings if, for instance, the cases arose from a common set of facts/laws, the reliefs sought were similar, or the reliefs were sought against the same defendant/respondent (rule 9 of CTR).

11. As a mechanism for class actions was yet to be introduced in Hong Kong, Mr TANG Ka-piu opined that the Commission should provide legal assistance to claimants under the CO, whose reliefs sought were against the same defendant/respondent, to file a collective claim in the Tribunal so as to reduce their legal costs.

12. AJA(Dev) advised that the Subcommittee might wish to seek responses from the Commerce and Economic Development Bureau, which was the responsible policy bureau for the principal legislation of the CO, on the suggestions made by Mr TANG Ka-piu in paragraphs 9 and 11 above. Members agreed. Members further agreed that the clerk should write to the Department of Justice on the progress made in taking forward the recommendations of the Law Reform Commission on class actions.

Clerk

Action

III. Date of next meeting

13. Members agreed to hold the next meeting on 9 April 2015 at 10:45 am in Conference Room 3 of the Legislative Council Complex.

14. There being no other business, the meeting ended at 9:35 am.

Council Business Division 4
Legislative Council Secretariat
27 March 2015

**Subcommittee to Study the Proposed Subsidiary Legislation on the
Procedures to be Adopted by the Competition Tribunal**

**Proceedings of the first meeting
on Tuesday, 17 March 2015, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Declaration of interest			
000330 – 000355	Mr Abraham SHEK Mr Andrew LEUNG	Mr Andrew LEUNG declared that he was a member of the Competition Commission ("the Commission").	
Election of Chairman			
000356 – 000430	Mr Abraham SHEK Mr LEUNG Kwok-hung Mr Dennis KWOK	Election of Chairman	
Meeting with the Judiciary Administration ("JA") and the Administration			
000431 – 001735	Chairman JA Mr Abraham SHEK	Briefing by JA on its paper entitled "Brief on the Proposed Competition Tribunal Rules and other Related Rules" (LC Paper No. CB(4)632/14-15(01)). At the request of members, JA agreed to provide a copy of the comments given by the two legal professional bodies and the Judiciary's responses to these comments.	JA to provide information (paragraph 6 of the minutes)
001736 – 003440	Chairman Assistant Legal Assistant 2 ("ALA2") JA Mr LEUNG Kwok-hung Mr Abraham SHEK	Briefing by JA on its paper entitled "Comparison of the Key Differences in the Procedures of the Competition Tribunal and the Court of First Instance" (LC Paper No. CB(4)632/14-15(02)). ALA2's enquiry about the rationale for requiring the person to also file a statement of claim (rule 93(1)(b) of the Competition Tribunal Rule ("CTR")) as in the case of requiring plaintiffs to do the same for making other civil claims in the Court of First Instance ("CFI"), as a follow-on action could only be brought by a person for the loss or damage he/she had suffered as a result of any act that had been determined to be a contravention of a conduct rule under section 110 of the Competition Ordinance (Cap. 619) ("CO").	

Time Marker	Speaker(s)	Subject(s)	Action required
		At the request of members to better facilitate court users, JA undertook to examine whether the procedures and/or information required for bringing follow-on actions could be simplified.	JA to provide information/ response (paragraph 8 of the minutes)
003441 – 005949	Chairman JA Mr TANG Ka-piu Mr LEUNG Kwok-hung	<p>Briefing by JA on its paper entitled "Broad Comparison of the Key Procedures of the Competition Tribunal, the Lands Tribunal and the Small Claims Tribunal" (LC Paper No. CB(4)632/14-15(03)).</p> <p>Mr TANG Ka-piu's suggestions that:</p> <p>(a) private follow-on actions under the CO could be filed in the Small Claims Tribunal if the amount of claims was small, say, \$50,000 or less; and</p> <p>(b) the Commission should provide legal assistance to claimants under the CO, whose reliefs sought were against the same defendant/respondent, to file a collective claim in the Tribunal so as to reduce their legal costs.</p> <p>Members agreed to seek responses from the Commerce and Economic Development Bureau ("CEDB"), which was the responsible policy bureau for the principal legislation of the CO, on the above suggestions made by Mr TANG Ka-piu.</p>	CEDB to provide information/ response (paragraph 12 of the minutes)
005950 – 010345	Chairman JA	Briefing by JA on its paper entitled "Rules and Procedures Applicable to the Competition-related Courts in Selected Common Law Jurisdictions" (LC Paper No. CB(4)632/14-15(04)).	
010346 – 010412	Chairman Clerk	Date of next meeting	